

ESTTA Tracking number: **ESTTA374206**Filing date: **10/20/2010**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following parties oppose registration of the indicated application.

Opposers Information

Name	Big Creek Expeditions, Inc.		
Entity	Corporation	Citizenship	Tennessee
Address	3541 Hartford Road Hartford, TN 37753 UNITED STATES		

Name	Nantahala Outdoor Center, Inc.		
Entity	Corporation	Citizenship	North Carolina
Address	13077 Highway 19 West Bryson City, NC 28713-9114 UNITED STATES		

Name	Outdoor Adventures, Inc.		
Entity	Corporation	Citizenship	Tennessee
Address	3635 Trail Hollow Road Hartford, TN 37753 UNITED STATES		

Name	Smoky Mountain Outdoors Unlimited, Inc.		
Entity	Corporation	Citizenship	Tennessee
Address	3299 Hartford Road Hartford, TN 37753 UNITED STATES		

Name	Rapid Expeditions, LLC		
Entity	LLC	Citizenship	Tennessee
Address	3605 Hartford Road Hartford, TN 37753 UNITED STATES		

Attorney information	Jacob G. Horton Pitts and Brittian, P.C. P.O. Box 51295 Knoxville, TN 37950-1295 UNITED STATES jhorton@pitts-brittian.com Phone:865-584-0105		
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Applicant Information

Application No	85019492	Publication date	09/21/2010
Opposition Filing Date	10/20/2010	Opposition Period Ends	10/21/2010

Applicant	RITS, LLC P.O. Box 592 Gatlinburg, TN 37738 UNITED STATES
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Goods/Services Affected by Opposition

Class 041. First Use: 1989/06/01 First Use In Commerce: 1989/06/01
All goods and services in the class are opposed, namely: providing outdoor recreational services in the nature of rafting

Grounds for Opposition

The mark is merely descriptive	Trademark Act section 2(e)(1)
The mark is primarily geographically descriptive	Trademark Act section 2(e)(2)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Genericness	Trademark Act section 23

Attachments	00221705.PDF (8 pages)(25995 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	s/Jacob G. Horton/
Name	Jacob G. Horton
Date	10/20/2010

In the Matter of Application Serial No. 85/019,492
Mark: RAFTING IN THE SMOKIES
Published in the *Official Gazette* on September 21, 2010

BIG CREEK EXPEDITIONS, INC.,
NANTAHALA OUTDOOR CENTER, INC.,
OUTDOOR ADVENTURES, INC.,
RAPID EXPEDITIONS, LLC, and
SMOKY MOUNTAIN OUTDOORS
UNLIMITED, INC.,

 Opposers,

 v.

RITS, LLC,

 Applicant.

NOTICE OF OPPOSITION

Big Creek Expeditions, Inc. (“Big Creek”), a corporation organized and existing under the laws of the State of Tennessee, located and doing business at 3541 Hartford Road, Hartford, Tennessee 37753; together with Nantahala Outdoor Center, Inc. (“NOC”), a corporation organized and existing under the laws of the State of North Carolina, located and doing business at 13077 Highway 19 West, Bryson City, North Carolina 28713-9114; Outdoor Adventures, Inc. (“Outdoor Adventures”), a corporation organized and existing under the laws of the State of Tennessee, located and doing business at 3635 Trail Hollow

Road, Hartford, Tennessee 37753; Rapid Expeditions, LLC (“Rapid Expeditions”), a limited-liability company organized and existing under the laws of the State of Tennessee, located and doing business at 3605 Hartford Road, Hartford, Tennessee 37753; and Smoky Mountain Outdoors Unlimited, Inc. (“Smoky Mountain Outdoors”), a corporation organized and existing under the laws of the State of Tennessee, located and doing business at 3299 Hartford Road, Hartford, Tennessee 37753 (hereinafter, collectively, “Opposers”), each believe that they will be damaged by the registration of the alleged mark shown in Application Serial No. 85/019,492 in International Class 41 and hereby oppose the same.

The grounds for Opposition are as follows:

1. On April 21, 2010, the Applicant, RITS, LLC (“Applicant”) filed U.S. Trademark Application Serial No. 85/019,492 under Trademark Act Section 1(a), 15 U.S.C. § 1051(a), for the alleged mark “RAFTING IN THE SMOKIES” for use in connection with “providing outdoor recreational services in the nature of rafting” in International Class 41. Applicant claims in U.S. Trademark Application Serial No. 85/019,492 that it has used the alleged mark “RAFTING IN THE SMOKIES” in commerce since at least as early as June 1, 1989.

2. In U.S. Trademark Application Serial No. 85/019,492, Applicant disclaims the exclusive right to use the term “RAFTING” apart from the alleged mark as a whole on the grounds that the term “RAFTING” is primarily merely descriptive of “providing outdoor recreational services in the nature of rafting” in International Class 41. Applicant claims in U.S. Trademark Application Serial No. 85/019,492 that the alleged mark “RAFTING IN THE SMOKIES” has become distinctive under Trademark Act Section 2(f), 15 U.S.C. § 1052(f) through Applicant’s exclusive and continuous use of the alleged mark in commerce

in connection with “providing outdoor recreational services in the nature of rafting” for at least the five years immediately before the date U.S. Trademark Application Serial No. 85/019,492 was filed. Applicant’s claim of alleged distinctiveness is based solely on its claim of continuous and exclusive use of the alleged mark in commerce for at least the five (5) years immediately before the date U.S. Trademark Application Serial No. 85/019,492 was filed.

3. The alleged mark was published in the *Official Gazette* on September 21, 2010. Pursuant to the rules set forth by the Trademark Trial and Appeal Board, the Notice of Opposition opposing registration of the alleged mark in Serial No. 85/019,492 must be filed by October 21, 2010. Accordingly, this Notice of Opposition is timely filed.

4. Opposers are each providers of outdoor recreational services in the nature of whitewater rafting expeditions. Opposers each provide such rafting services in and around the town of Hartford, Tennessee, and more specifically, at various locations along the Pigeon River in the Great Smoky Mountains National Park.

5. On information and belief, Applicant is also a provider of outdoor recreational services in the nature of whitewater rafting expeditions in and around the town of Hartford, Tennessee, and more specifically, at various locations along the Pigeon River in the Great Smoky Mountains National Park. On information and belief, Applicant is a direct competitor of each of Opposers.

6. Opposers seek to prevent the registration of the alleged mark “RAFTING IN THE SMOKIES” on the grounds that the alleged mark consists of a generic name for Applicant’s and Opposers’ services that no one entity should control. Alternatively, Opposers seek to prevent the registration of the alleged mark “RAFTING IN THE

SMOKIES” on the grounds that the alleged mark is a merely descriptive and/or geographically descriptive term that has not become distinctive of Applicant’s services. The alleged mark “RAFTING IN THE SMOKIES” consists of a commonly-used phrase that identifies a type of service, namely, rafting services, which are provided by Opposers, as well as Applicant, in a well-established region of eastern Tennessee and western North Carolina, namely, the Great Smoky Mountains National Park, a region commonly referred to as “the Smokies.” Accordingly, no entity should be entitled to exclusive trademark rights in this phrase or the right to interfere with any entity’s enjoyment of and right to use this phrase in connection with providing rafting services in the Smokies. Opposers seek to prevent registration of the alleged mark “RAFTING IN THE SMOKIES” in order to prevent interference with its commercial activities, specifically, their ability to accurately and generically identify and/or describe to its consumers and other members of the public that it offers rafting in the Smokies.

7. Opposers also seek to prevent the registration of the alleged mark “RAFTING IN THE SMOKIES” on the grounds that the alleged mark is, and will continue to be, understood by the consuming public either as a generic phrase or a phrase which is primarily merely descriptive and/or primarily geographically descriptive of the applicable services, and not as a service mark or other source identifier.

8. The term “RAFTING” has been used generically throughout the United States to describe “providing outdoor recreational services in the nature of rafting” since well before the filing date and/or alleged first use date of U.S. Trademark Application Serial No. 85/019,492. As noted above, Applicant has disclaimed the exclusive right to use the term “RAFTING” apart from the alleged mark as a whole on the grounds that the term

“RAFTING” is primarily merely descriptive of “providing outdoor recreational services in the nature of rafting.”

10. The term “THE SMOKIES” has been used generically throughout the United States to refer to the mountainous region comprising and surrounding the Great Smoky Mountains National Park in eastern Tennessee and western North Carolina since well before the filing date and/or alleged first use date of U.S. Trademark Application Serial No. 85/019,492. On information and belief, a myriad of third parties have used phrases identical or similar to the phrase “THE SMOKIES” generically in connection with a wide variety of services related to outdoor activities and/or tourist activities provided in and around the Great Smoky Mountains National Park since well before the filing date and/or alleged first use date of U.S. Trademark Application Serial No. 85/019,492.

11. By virtue of the extensive use of the phrase “THE SMOKIES” to refer generically to the geographic area comprising and surrounding the Great Smoky Mountains National Park, the relevant public has come to understand the term “THE SMOKIES” as being a generic name for, or primarily geographically descriptive of, the area comprising and surrounding the Great Smoky Mountains National Park.

12. Opposers, and other competitors of Applicant, have used and continue to use the terms “RAFTING,” “THE SMOKIES,” and “RAFTING IN THE SMOKIES,” and similar variations thereof, generically and/or descriptively to identify and/or describe rafting services offered in the Smokies.

13. On information and belief, Applicant itself has used and continues to use the terms “RAFTING,” “THE SMOKIES,” and “RAFTING IN THE SMOKIES,” and similar

variations thereof, generically and/or descriptively to identify and/or describe rafting services offered in the Smokies.

14. Accordingly, the phrase “RAFTING IN THE SMOKIES” is generic or is primarily merely descriptive and/or primarily geographically descriptive of rafting services in the Smokies, and as such the phrase “RAFTING IN THE SMOKIES” does not qualify for the protection granted by federal trademark registration.

15. Opposers, and other competitors of Applicant, have used the phrase “RAFTING IN THE SMOKIES,” and similar variations thereof, in connection with rafting services provided in the Smokies during the five years immediately before the date U.S. Trademark Application Serial No. 85/019,492 was filed. Accordingly, Applicant’s claim in U.S. Trademark Application Serial No. 85/019,492 that the alleged mark “RAFTING IN THE SMOKIES” has become distinctive under Trademark Act Section 2(f), 15 U.S.C. § 1052(f) through five years of continuous exclusive use in commerce is entirely without merit.

16. Applicants have not shown, and cannot show, that the alleged mark “RAFTING IN THE SMOKIES” has become distinctive of the Applicant’s services under Trademark Act Section 2(f), 15 U.S.C. § 1052(f).

17. On information and belief, Applicant was aware at the time U.S. Trademark Application Serial No. 85/019,492 was filed, and at the time its claim under Trademark Act Section 2(f), 15 U.S.C. § 1052(f) was made that Opposers and other competitors of Applicant were using the phrase “RAFTING IN THE SMOKIES,” and similar variations thereof, in connection with rafting services in the Smokies.

18. On information and belief, Applicant filed U.S. Trademark Application Serial No. 85/019,492 with the intent to deceive the United States Patent and Trademark Office into believing that the alleged mark “RAFTING IN THE SMOKIES” had become distinctive under Trademark Act Section 2(f), 15 U.S.C. § 1052(f), when in fact it had not. On information and belief, Applicant filed U.S. Trademark Application Serial No. 85/019,492 with the intent to deceive the United States Patent and Trademark Office into believing that Applicant had used the alleged mark “RAFTING IN THE SMOKIES” exclusively in commerce in connection with “providing outdoor recreational services in the nature of rafting” for at least the five years immediately before the filing date of U.S. Trademark Application Serial No. 85/019,492, when in fact it had not. Applicant’s actions in filing and maintaining Application Serial No. 85/019,492 constitute fraud upon the United States Patent and Trademark Office.

19. Registration of the alleged mark “RAFTING IN THE SMOKIES” by Applicant would confer upon Applicant statutory presumptions to which it is not entitled in view of the genericness, descriptiveness, and/or geographic descriptiveness of the alleged mark “RAFTING IN THE SMOKIES”. Such registration of the alleged mark “RAFTING IN THE SMOKIES” by Applicant would result in interference with Opposers’ commercial activities, specifically, Opposers’ ability to accurately describe to their consumers and other members of the public that they offer the services of rafting in the Smokies, and would result in additional damage and injury to Opposers.

20. Therefore, registration of the alleged mark of U.S. Trademark Application Serial No. 85/019,492 should be refused under 15 U.S.C. §§ 1052(e), 1052(f), 1053, and 1063.

WHEREFORE, Opposer prays that U.S. Trademark Application Serial No. 85/019,492 be rejected, and that registration of the alleged mark for the services therein specified be denied and refused.

The U. S. Patent and Trademark Office filing fee of \$300.00 required by 37 C.F.R. § 2.6(a)(17) is submitted herewith. Please charge any additional fees or credit any overpayment associated with this Notice of Opposition to Deposit Account No. 16-1910.

Respectfully submitted,

s/Jacob G. Horton
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